

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10302 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARESH @ VIJAY LALJIBHAI BUTANI

Versus

COMMISSIONER OF POLICE

Appearance:

MS BUNNA DATTA & MR ANIL S DAVE for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 18th June, 1998, made by the Commissioner

of Police, Surat City, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a habitual offender and therefore a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are held to be prejudicial to the maintenance of public order. As many as five offences punishable under Chapter XVII of the IPC have been registered against the petitioner, three of them are of the year 1995, and two have been registered in the year 1998. In the offences registered in the year 1995, the petitioner was arrested and released on bail. After his release on bail, the petitioner once again committed similar offences in the month of April 1998. In each of the cases, some stolen articles were recovered from the petitioner. Besides, the Detaining Authority has also relied upon the statements of the witnesses who have stated about the incidents that occurred on the dates mentioned in the said statements. The activities of the petitioner are, therefore, found to be prejudicial to the maintenance of public order.

Ms. Datta, the learned advocate appearing for the petitioner has submitted that in the offences registered in the year 1998, the petitioner was arrested in the month of April, 1998 and was released on bail on 11th May, 1998. The fact that the petitioner was arrested and was released on bail in the aforesaid two offences, has not been taken into consideration by the Detaining Authority. The subjective satisfaction reached by the Detaining Authority, therefore, suffers from the vice of non application of mind, and is vitiated.

It is not disputed that the petitioner was arrested and was released on bail on 11th May, 1998 as averred. However, bare perusal of the grounds of detention discloses that the said fact has not been considered by the Detaining Authority. It appears that the Detaining Authority while recording his subjective satisfaction was not alive to the fact that the petitioner had been released on bail earlier. The subjective satisfaction, therefore, can not be said to have been based on all the relevant materials and is, therefore, vitiated. Consequently the order of detention should fail.

Petition is, therefore, allowed. The impugned

order dated 18th June, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI